

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission Wednesday, December 14, 2016, 10:00 AM House Room C, GAB

I. Delegate Danny Marshall, Chair, called the meeting to order at 10:05 AM.

Members in attendance: Delegate Daniel W. Marshall, III, *Chair*; Senator Mamie E. Locke, *Vice-chair(by phone)*; Senator George L. Barker; Senator William Stanley; Delegate David L. Bulova; Delegate Betsy B. Carr; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee*; and Laura D. Lafayette, *Governor Appointee*.

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Welcome and Call to Order

- **Delegate Danny Marshall, Chair:** We're going to have Bob Adams with HDAdvisors to start with?
- **Elizabeth Palen:** Mr. Chair, first, Secretary of Commerce and Trade is going to say hello and greet each of us.
- **Marshall:** Yes. Please come forward. Welcome. You are always welcome.
- **Secretary Todd Haymore:** Mr. Chairman, members of the Commission, thank you for having me. It's always an honor, Delegate Marshall. As you mentioned, being with you yesterday in Martinsville and Henry County for that new investment and 50 new jobs. My guess is we're going to need some homes for those jobs as well. So thank you for being a part of that.
 - Elizabeth was kind enough to ask me to come by as part of-I guess what we're calling-the learning tour of the first four months that I've been in as Secretary of Commerce and Trade and learning all the things that we do. Obviously as we discussed, Delegate Marshall, the Governor's asked me to focus in on economic development and global trade enhancements, but recognizing full well that there

are a number of other issues that the Secretary is in charge of: community development, workforce development, and in this case, the work that you all do, particularly with two agencies I know, Bill Shelton and the Department of Housing and Community Development, and Housing Authority and others.

- So I just wanted to come by this morning to thank you for the work being done by the Commission, the legislative members, and also the gubernatorial appointees. I just wanted to let you know that as Secretary, I stand ready to assist the Commission in any way that we can. Obviously, with Director Shelton at DHCD, and the rest of my staff, if there's anything that we can do. We look forward to working with Elizabeth and you in any way possible to provide more opportunities for safe, affordable housing in the Commonwealth of Virginia, recognizing that it does play into community development and economic development as well.
- **Marshall:** Yes, absolutely. Let's see if we have any questions of the committee? Seeing none, again, you're always welcome. Looks like you have a comment that you're ready to say.
- **Haymore:** I was just getting ready to comment that I was escaping before Senator Stanley asked me any questions. Thank you very much, Mr. Chairman.
- **Marshall:** Okay. All right, Elizabeth, what's next? Are we going to talk about Maggie Walker Community Land Trust?
- **Palen:** Yes. It builds on the work we were doing last year with land banking.
- **Marshall:** Thank you. Welcome.

III. Maggie Walker Community Land Trust

- **Bob Adams, HDAvisors:** Mr. Chairman, I'm Bob Adams. I'm a housing consultant here in Richmond, and I am working with Maggie Walker Community Land Trust. I wanted to take just a couple of minutes to tell you about what's been happening with the land trust here in Richmond.
 - This is a topic we talked about with the Commission last year, particularly in the context of talking about land banks. Land banks and community land trusts are two vehicles that can work in partnership to create affordable housing.
 - A community land trust is basically a non-profit organization that provides affordable housing in a unique and unusual way. It does this by providing affordable housing both as an asset to the homebuyer, but also as an asset to the community where that home is located because that home is affordable and available not just for that first family that buys it, but it's available as an affordable home within that community in perpetuity. That's the basic way in

which a land trust operates differently than most non-profit affordable housing providers.

- There are a lot of land trusts across the country, over 250. There are many statewide community land trusts as well. We have in Virginia now three community land trusts: one in Charlottesville, one in Richmond, and one that's just formed in Newport News.
- I want to talk to you a little bit about the Maggie Walker Community Land Trust that is up and operating in Richmond. I should point out that one of your Commission members, Laura Lafayette, serves as the chair of the Maggie Walker Community Land Trust.
- The goal of the Maggie Walker Land Trust is to do three things: to increase access to affordable homeownership in Richmond, to make sure that we continue to have neighborhoods in Richmond that are permanently affordable to lower-income families who want to become homeowners, and also to stabilize transitional neighborhoods by increasing the amount of homeownership in those communities.
- One of the unique things about land trusts is the way that they're governed, and that is typically a tripartite form of board governance. It includes the land trust homeowners. It includes members of the community who live in the neighborhood where the land trust is located and care about the community. And it includes broader representatives from the community or from local government who are committed to increasing affordable housing. That one-third/one-third/one-third ratio of board members is typical of land trusts across the country.
- The basic model that a land trust uses is that it splits the ownership of the land and the structure that sits on it. So the land underneath the house is owned by the community land trust. The homebuyer purchases and finances the house that sits on the land. So, immediately, the land trust makes the home more affordable by removing the cost of land from the amount that the homebuyer needs to purchase. The land trust leases the land to the homebuyer on a 99-year lease. And through that lease, it controls the future sales prices of the house. And it also controls the income level of the next buyer or all future buyers.
- This is a model which is referred to as *shared equity*. In the case of the Richmond land trust, the Maggie Walker Land Trust, the board has decided on a 50/50 equity share. So what that means is as the market value of the house increases, the homebuyer earns 50 percent of that increase in value. The other 50 percent is not added to the future sales price. So the price of the house remains more and more affordable as compared to the market prices of homes around it.

- In this example, you have land cost of \$25,000 and an initial home price of \$150,000. So the family buys the home for \$150,000. If it weren't a land trust home, it would sell for \$175,000. So there's that initial affordability benefit. Then let's assume that the family lives there for five years. During that period, the price of the home goes up \$25,000. It goes from \$150,000 to \$175,000, the value of the house. The family decides to sell at the end of five years. At that point, 50 percent of that increase in value is added to the price they paid for the home. So they would sell the home at that point for \$162,500 plus whatever realtor or other transaction costs. If the house were not a land trust house, that next sale five years from now would have been \$175,000 plus the \$25,000 land. It would be \$200,000. So what sells in five years for \$162,500 is actually a house worth \$200,000.
- If you think about a graph which has two lines on it, one line is the increase in market home prices in an area, and the second is the CLT's home price. The gap between those is the benefit that that CLT is providing to the homebuyer and to the future homebuyers. That gap grows over time. So that house will be more affordable 10 years from now, 20 years from now, 30 years from now.
- **Marshall:** The other areas that have already done this [are] on this slide, other states. How many years has this concept been around?
- **Adams:** It's been around for a long time. The very first land trusts were done up in New England, and they were done probably 40 years ago. Some of the oldest land trusts are up in Vermont, New Hampshire, and Massachusetts.
- **Marshall:** So the value of that house is what the market will pay for that house? Who determines the selling price? The market determines the selling price?
- **Adams:** The sales price of the house is determined by the lease agreement between the community land trust and the homeowner. Every land trust does this a little bit differently. They have different shared equity models that they use. The Charlottesville Land Trust uses a 25/75 split. So the homebuyer in Charlottesville, they receive 25 percent of the increase in value. In Richmond, the land trust here has decided to use a 50/50 split. That gives the homeowner a somewhat larger stake in the appreciating value of the house. But the price of the home is always determined by the community land trust and by the provisions that are in the lease agreement.
 - The other provision in the lease agreement that's important is the restriction on the income of the future homebuyer. So not only does the house remain affordable, but we make sure that home is going to be occupied by a low- or moderate-income family in perpetuity. And that's one of the intentions of the land trust, is to make sure that neighborhoods remain mixed income and that homeownership remains a possibility for working families in communities—and in our case, in communities throughout Richmond.
- **Marshall:** So how many houses does your group have in Richmond now?

- **Adams:** The land trust is just getting underway, so at this point there have been no houses completed. The model in Richmond is really twofold. One is to access tax sale property from the City of Richmond, and the City of Richmond has been a partner with the land trust up to this point. We expect to have a pipeline of some tax sale property, both lots and tax sale houses that come to the land trust over the next year. The land trust also has been successful in raising philanthropic money and will use that money to purchase some lots.
 - Let me just show you one other slide very quickly about Richmond, one of the reasons why this is important. You're not going to be able to see this very well. Richmond has both a blessing and a curse. A lot of people want to live in Richmond right now. It has created a fairly active real estate market in the city. And so we are experiencing change in a number of neighborhoods in Richmond that were traditionally lower income. One of those neighborhoods is North Church Hill. This is the neighborhood where the Maggie Walker Community Land Trust has chosen to begin its work and focus its early work.
 - If you could see these slides better, this just shows you some examples of what's happening in Church Hill. The dark areas are easiest to interpret. Just looking at the dark areas will tell you the pace at which sales are happening in North Church Hill and on the right, changes in sales price. Those are sales where there is, I believe—I can't quite read the legend—there are significant increases in sales price at each sale.
 - This kind of data tells us that this neighborhood is transitioning rapidly. And without some intervention, this is a neighborhood that will become unaffordable to people who have lived there for a very long time and who've considered Church Hill to be their home—for whom Church Hill is their home.
- **Marshall:** Okay, thank you.
- **Adams:** I don't need to tell the Commission about why we need affordable housing. We have a significant shortage of affordable housing in the city. This chart will show you for a variety of jobs within the city, average wages compared to the average wage to afford a median sales price in the city. So we have many, many working Richmonders who would like to both live and work in the city and would like to get a stake in homeownership in the city, but are unable to do so. So the land trust is one way in which we can achieve that.
 - These are some examples of the types of homes in North Church Hill. This is an example of a home recently built in that area on North Thirty-First Street which has a \$400,000 sales price. The price escalation in this neighborhood is quite dramatic. The land trust is going to be one way to put a brake on that and to continue to offer opportunity for affordable homeownership in a neighborhood that's changing pretty dramatically.

- The Maggie Walker Land Trust is legally formed. It has been operational for not quite a year. It has a 501(c)(3) application pending. It has developed all of its policies and procedures and expects to begin to acquire property in the first quarter of 2017. And we hope to have three to five houses underway next year.
- I'm happy to answer any questions.
- **Marshall:** Any questions of the members of the Commission? Sir, back to that picture with the \$400,000 house. The person next door to that, if they have one of your houses, a CLT house, does that hurt that \$400,000 resale value down the road? In other areas, you said some of them have been doing this for 40 years or so. So does it hurt the neighborhood's value or people are just stepping up and buying the houses?
- **Adams:** The sale of a land trust home or the sale of any house that has a deed restriction or a sales price restriction built into it from financing, that should be reflected in any appraisal that's being done on a non-restricted home. I've communicated with a lot of land trusts around the country, and I have not heard that this has been a problem in any community where land trust homes were having a negative impact on appraisals in the neighborhood.
- **Marshall:** So how do you choose who gets the house and who doesn't get the house?
- **Adams:** It's really like any other affordable housing non-profit. It's essentially a first-come/first-served process. We're going to begin to do community outreach in the next month or so. We'll begin to develop a pipeline of persons interested, households, families interested in buying a land trust home. They have to go through homebuyer readiness and homeownership counseling. They have to get mortgage qualified by a mortgage lender. We'll work with families as they come up through the pipeline.
- **Marshall:** Okay. Further questions of Commission members? Yes, please.
- **Male:** When you talk about home values of the surrounding values—and let's just take by way of example that picture of the next door neighbor who is selling their house or has got a contract. An appraiser comes in and he's looking at comps to appraise the value of the house as part of the negotiating process, part of the settlement process. Are we assured that the appraiser is going to throw that one out? I know you say, Well, this is different. But is that not going to be a part of the appraisal process where a comp is used, and this house is sold for less value is not included in that appraisal process? What assurances are there?
- **Adams:** When a community land trust house is sold, it's identified as a land trust sale. It is a very different type of sale because it has a land lease. So any appraiser is going to recognize that this sale is unique and different. And I think the practice has been if an appraiser identified a sale which has a restriction built into it from a governmental loan or from a deed restriction that that is addressed as a part of the appraisal, that that sales price is adjusted or is not included in the appraisal of the property that they're doing.

- **Chip Dicks:** Mr. Chairman.
- **Marshall:** Yes, sir.
- **Dicks:** We're hoping they do that. I mean, there's nothing that compels them to do that.
- **Marshall:** Chip—
- **Adams:** There may very well be standards within—and I'm not an expert on appraisal standards.
- **Dicks:** Oh, I get that. And I'm not trying to hold you to that.
- **Adams:** Right. But I suspect there are standards for appraisers that require them to look beyond the simple sales prices of a house. I think especially in situations like this where there would be an immediate tipoff because it's a land lease sale.
- **Dicks:** Thank you, Mr. Chairman.
- **Marshall:** The land trust, did you need legislation to do this?
- **Adams:** No. This was really for information. It was really a follow-up. We did a presentation last year and this was—
- **Marshall:** I didn't know if we had passed a bill in the past to allow this or not. Okay. All right. Other questions of the Commission members? Okay. Sir, thank you so much for your time coming this morning. Have a great day. Merry Christmas.

IV. 2016 Cash Proffer Report

- **Marshall:** Mr. Shelton, you have staff members here who are going to do a presentation. Would you like to introduce them, please? Thank you for being here. You have a very festive tie on this morning.
- **Mr. Shelton:** It is the season.
- **Marshall:** It is the season.
- **Shelton:** Don't get many opportunities. Mr. Chairman, from time to time, you have asked us to come before you to present on a report that the legislature has requested on cash proffers and their implementation in the communities. That work is done by the Commission on Local Government, which is now part of the Department of Housing and Community Development. We have with us today the head of that office, Elizabeth Rafferty, and David Conmy, who is the local government specialist overseeing [unintelligible]. But Kristen Dahlman is the one that actually does the report, and she's going to be presenting to you today, Mr. Chairman.

- **Marshall:** Welcome. Again, your name, ma'am?
- **Kristen Dahlman**, DHCD, *Policy & Legislative Office*: I'm Kristen Dahlman.
- **Marshall:** Okay, thank you. It's the last report in our book, proffer report.
- **Dahlman:** Good morning, Mr. Chairman and members of the committee. Again, I'm Kristen Dahlman, the senior policy analyst with the Commission on Local Government. I'm here to report on our recent 2016 Cash Proffer Report that was recently adopted by the Commission on October 15th. I'm going to provide just a brief overview of cash proffers and proffers in the Commonwealth and also share some highlights and trends from the report. I'll also just offer a little insight on the recent cash proffer legislation as it relates to our report.
 - Section 15.2-2296 of the Code of Virginia authorizes governing bodies to accept proffers through conditional zoning. Localities under certain sections of the Code have been authorized to accept proffers since the 1950s. The number of localities authorized to collect cash proffers; that number of localities has been expanded over the years. I'll go a little more into detail on that.
 - Cash proffers are a type of proffer voluntarily offered as a part of a conditional rezoning application. It's usually offered to offset the fiscal implications for demand of public services.
 - There are three different statutes that authorize the collection of cash proffers. In 1990, Sections 15.2-2303 and 15.2-2298 expanded the eligibility to counties with an urban county executive form of government. Localities with a decennial census growth rate of 10 percent, and localities with certain adjacent contiguous proximity to localities meeting those two criteria, and any county east of the Chesapeake Bay. In 2006 they changed it from to 10 percent to five percent for the decennial growth rate. And then in 2007, New Kent County was also added to be eligible.
 - This is just a visualization to show you who would be eligible under those three statutes that I mentioned on the previous slide. So any locality in gray or red denotes eligibility. Those who are not authorized are shown in white for comparison. Most of them are in southwest Virginia, and a few are scattered on the Eastern Shore.
- **Marshall:** Back to the five percent growth. Is that five percent from year to year or does it look at a running average? If I look at that map up there, what I would have thought would have been red is not red.
- **Dahlman:** Over 10 years, decennial. So out of those who are ineligible, it's about eight percent of the Commonwealth. So the 26 localities that are not eligible include two cities, six counties, and 18 towns.

- I included this visualization to show the number of localities reporting cash proffer activity since the report's inception. As you can see, over time the majority are counties that are collecting, followed by cities, and then towns. The highest amount of localities reporting cash proffer activity was in 2007. After that we saw a decline up until 2013, when we started to see an uptick again. It went back down in 2015, and then we went back on the rise for this past year in fiscal year 2016. So, for fiscal year 2016, cash proffer activity occurred the most in counties at 68 percent, followed by 17 percent for cities, and 13 percent for towns.
- Once a locality receives cash proffer funds, there are certain guidelines set forth that must be followed, so I just want to go over those briefly. They're all found under Section 15.2-2303.2. So Section A, a locality must begin construction or make progress, site work, etcetera, or engineering within 12 years of full payment of cash proffer associated with an approved rezoning application. If not, localities must forfeit the funds to the Commonwealth Transportation Board.
- For Section B, capital improvement programs must include all proffer payments received during the most recent fiscal year. Capital budgets must include the amount of proffered cash payments predicted to be used in the ensuing year.
- Under Section C, there is some flexibility in cash proffer usage in that a locality may use proffered cash for capital improvements for alternative improvements of the same category. That's subject to a public hearing and notification given to the proffer. Also, they can use proffered road transportation funds as matching funds for VDOT's revenue sharing program, provided the project is in the locality's capital improvement program. So, just slight flexibility there.
- Finally, any localities with a population in excess of 3,500 must report to the Commission on local government cash proffers received and expended starting with fiscal year 2000. That's where we started.
- The survey instrument that we use is nearly identical to what is laid out in the Code. So, we ask localities to report cash proffers collected and expended. We also break down the expended categories, as you can see listed above. We did not change the survey format because we were collecting data on cash proffers that occurred prior to the new cash proffer legislation being enacted. This year's response rate was 98 percent. We just had one missing response from a county that previously had not reported receiving or expending cash proffers. We tried several times, and we just didn't think that it would alter the results since they hadn't been reporting in the past.
- Based on the results from our most recent survey, of 162 localities that are required to report their acceptance of cash proffers, 43 or 26.54 percent reported accepting cash proffers during fiscal year 2016. Collections from fiscal year

2016 total over \$99 million, which is the highest amount ever recorded. For expenditures, it was \$7.86 million, also the highest ever recorded.

- **Laura Lafayette:** Mr. Chairman, may I ask a question?
- **Marshall:** Sure, absolutely.
- **Lafayette:** So the results that we're seeing here are, by and large, prior to the enactment of the proffer legislation.
- **Dahlman:** Correct.
- **Lafayette:** Okay. So this is a reflection of the rebound of the industry and then prior to the new legislation going into effect. Thanks.
- **Dahlman:** Correct. Cash proffer collections and expenditures have fluctuated over time. This visual representation shows cash proffer revenues in the dark blue and expenditures in red by year since the report's inception. As I mentioned earlier, the fiscal year 2016 collections and expenditures were the highest recorded. We see a drop after 2006 in expenditures. Again, that's the red bar. And it rises at a slow pace, only surpassing 2006 levels in the current fiscal year 2016 that we have the data available for.
 - For revenues, they fluctuate frequently. They have the steady increase and then have lows in 2009 and 2011, as you can see. Revenues do not surpass 2005 and 2006 levels until 2013. Overall, as seen by the trend line, though we have seen an increase in both our revenues and expenditures with collections, we have a slightly higher rate than expenditures over time.
 - Just to show a little bit more comparison, we averaged out the revenues and expenditures from fiscal year 2000 and fiscal year 2016. As of the current fiscal year 2016, the average annual statewide revenue collection was approximately \$77.9 million, while the average annual statewide expenditure was \$67.6 million. As you can see from this visual representation of the difference from state average over time, in the current fiscal year the revenues were 78 percent above the average and 92 percent difference for revenues above the average—or excuse me, for expenditures.
 - I just wanted to show you a visualization of which localities are currently receiving and collecting cash proffers. They're concentrated in Northern Virginia along the northern I-95 corridor, in the Richmond region, and in the Hampton Roads area. We have a few in the Northern Neck and Eastern Shore area, but most of them are concentrated in those areas of the Commonwealth. And then just the localities that are not eligible to receive at all are just denoted by the crosshatch marks. I know it's hard to see.

- On this next slide, we just wanted to show which localities were collecting the most cash proffers. In Northern Virginia, the highest amounts were collected—\$42 million from Loudoun County, followed by Fairfax County with \$16 million, and Prince William County with \$15 million. The least amount collected with \$510 from the Town of Smithfield, followed by the Town of Broadway with \$2,000 collected. So quite a difference.
 - We include this map just to compare cash proffer collection to the total housing units added to a locality. The map includes growth and number of housing units starting in 1990 when cash proffers were formally enacted into legislation. We only have data available up until 2014 from the U.S. Census. There are many reasons for the rise in housing units in a locality over time. This map only paints one part of the picture, but I just wanted to show you some similarities between which localities are collecting cash proffers and also where the highest numbers of growth, in total number of housing units, have been added.
 - Loudoun County has the highest percentage change in total housing units. It's a 251 percent change. Spotsylvania County follows them with the second-highest percent change at 123 percent. Both of these counties accepted cash proffers in fiscal year 2016. The top five highest in percentage change are Loudoun County, Spotsylvania, Stafford County, Manassas Park City, and James City County. All five of those were collecting cash proffers in the past fiscal year.
- **Dicks:** Question, Mr. Chairman.
 - **Marshall:** Yes.
 - **Dicks:** Thank you, Mr. Chairman. That's very interesting information and very useful. You kind of mentioned that really shows only half the picture. Assuming that we're going to do this on an annual basis, maybe you can put in a map next year that shows the net growth in actual housing units. You see that Fairfax County is kind of low there in the gray with the one percent to 50 percent. But even a one or a five percent increase in Fairfax County is going to result in many more housing units than almost anybody else on that map. So I think it would be useful to have that. This one is great; it would also be useful to just go ahead and show the sheer number of housing units, because that's what's actually generating the increase in proffers.
 - **Male:** While we have a wish list, I would like to see a list also—because we're talking about units, which I assume is a house. I'd like to see the value of those houses.
 - **Dahlman:** The value? Sure. And also I would like to point out that these numbers on this map are single-family and multi-family housing.
 - **Marshall:** Question.

- **Delegate Betsy Carr:** Thank you, Mr. Chairman. So there might be a number of units in an apartment that you're showing.
- **Marshall:** That was a question. So a condominium project or a townhouse or something, it's each individual unit where a family would live. It's not the whole project.
- **Dahlman:** Yes. We took it from the decennial census and also the American Community Survey as well. We combined both of those together.
 - I just wanted to break down the expenditures to show you just a little different visualization here. For the past year's report, the largest expenditure category is roads and other transportation, which account for 50 percent of the expenditures. Schools follow that at 15 percent and parks at 15.5 percent. Just to reiterate, the total expenditures of this past year are \$72.8 million. The categories that we show up here are directly taken from the Code. This is a breakdown based on our survey and what's spelled out in the Code.
 - I also broke down this chart by categories that would likely still be in compliance with the new cash proffer legislation that was passed. So, the pie slices highlighted in yellow—I know it's hard to see—would still be likely to be applicable, which are roads, schools, parks, and fire/rescue and public safety.
 - For fiscal year 2016, the expenditures that are likely in compliance account for 84 percent of the expenditures. The remaining 15.7 consist of the follow categories: libraries, water and sewer service extension, community centers, stormwater management, special needs housing, affordable housing, and miscellaneous.
 - One more visualization here. We just did a historical breakdown on expenditure categories. Over time, the major categories for cash proffer expenditures for each fiscal year include schools, parks, and roads. Expenditures on roads and parks and recreation increased significantly during the past year's report. And then data on categorical spending for fiscal years 2000 through 2002 was not collected, so we do not have those figures for those years.
 - Additionally, I just want to show you historically the breakdown of categories that are likely to be in compliance with the new cash proffer legislation. Over time, more than 50 percent of expenditures each fiscal year have been in compliance with the current statute, 15.2-2303.4. The ranges go from a low of 66.7 percent in 2012 to a high of 94.8 percent in fiscal year 2004 that would be likely to still be in compliance with the new legislation.
 - Just a couple of comments about the recent legislation passed. The data from the survey, again, as you asked beforehand, was collected from fiscal year 2016, meaning the results are revenues and expenditures that occurred prior to the legislation being enacted. In addition, localities do have 12 years to start

projects. So we may not see the full ramifications unless there are amendments. We may still see a little bit of expenditures in some of the categories that are likely to not be in compliance. But as I just showed you from the last slide, pretty much more or less, more like 60 percent over the years have been in compliance, so we'll just see more of a shift toward roads, schools, and public safety.

- What we do know from news articles and anecdotally is that localities are updating their cash proffer policies and regulations to be in compliance with the new legislation.
- Any questions?
- **Marshall:** Let's see if we have questions of Commission members. Yes?
- **Lafayette:** Has there been an effort to have a kind of standard understanding and interpretation of the new legislation? You get a different answer depending on what local attorney you're talking to. So I just wonder if the Commission or local government has had kind of an outreach effort to say This is how we understand the law?
- **Dahlman:** We have not done any outreach of that yet. We haven't really started an initiative either.
- **Marshall:** I think that's why we had the bill. Any other questions? Thank you so much for being here today.
- **Dahlman.** Thank you.
- **Marshall:** Now we'll go to the work groups. Affordable Housing: Delegate Peace.
- **Palen:** Yes, Mr. Chair. We also have Senator Locke on the phone, so if you'd hold on just a moment. Senator Locke, we're about to begin the legislation.
- **Marshall:** Okay.
- **Palen:** And she [Senator Locke] has included a letter to each of you in your packets.
- **Marshall:** Okay. So affordable housing is first on the agenda, and Delegate Chris Peace was the chair of that. So we'll go through that.

V. Reports from Work Groups

1. Affordable Housing, Real Estate Law, and Mortgages

- **Assistance Animals and Rental Property** (Recommended by Work Group, bill in binder).

- **Delegate Christopher Peace:** Thank you, Mr. Chairman.
- **Senator Mamie Locke:** Hey, I'm here.
- **Peace:** I think Senator Locke's on the line. We can hear you, Senator Locke. Thank you.
 - First is dealing with assistance animals and rental property. This was a request of the Commission to look into what have been a number of reports of residential property managers, housing providers, who are often presented with requests for waivers or exemptions from the payment of fees for having assistance animals in their rental residences or even having the animals themselves in their rental property. Assistance animals provide therapy and comfort for certain members of the disabled or impaired community.
 - The request that was made of the work group was that we would consider a path forward to address a problem that has been burgeoning online where businesses have been providing on-demand verification of one's disability without a therapeutic relationship. When an individual makes the request for the reasonable accommodation, they are able to present a credible document from a third-party verifier that says they have a particular disability or impairment that necessitates that assistance animal.
 - We are very concerned and the work group was concerned about the fraud that may exist in that area. The online businesses that really don't have a therapeutic relationship with the individual who is making that request for reasonable accommodation. Based on deliberation of the work group and testimony and evidence presented, the work group has unanimously recommended the legislation in draft form, which is found in your binder under the tab "Assistance Animals and Rental Property, Title Draft Legislation on Assistance Animals."
 - The draft seeks to address the issues that I've outlined in the context of federal fair housing and other existing relevant federal and state laws, regs, and recent guidance that has been promulgated by the state. Again, the recommendation before you was unanimous. There was public comment from the Disability Law Center, as I recall, as well as Housing Opportunities Made Equal. And on the latter, there was pretty strong opposition to moving forward with this legislation.
 - Mr. Dicks, I believe, is present who can answer some technical questions, as he was the central point for drafting of the bill in your binder. I'm happy to make a motion at the appropriate time, Mr. Chairman.

- **Marshall:** The first question is, Elizabeth, we don't have a quorum, do we? I don't think you can count someone on the phone for the quorum. So we make up the rules as we go along? So what we can do for the audience is that we don't vote on bills today. So what we can do is we can get—it's kind of like the Good Housekeeping Seal of Approval here. We can get the Virginia Housing Commission's endorsements for this bill or we can take no action.
- **Peace:** The recommendation of the work group, Mr. Chairman, was to endorse the draft that has been presented in the binder after hearing several presentations and public comment and weighing the problem that exists and presenting this as a solution to that problem.
- **Marshall:** Do we have questions?
- **Carr:** Mr. Chairman, I'd like to put forth reservations in terms of—I've heard from folks as we bring this forth if it could be tightened a bit just because of not having it so broad and creating a chilling effect on disabled people getting the housing. Additionally, if we could have the certification by a Virginia-licensed person who is licensed to give certifications for a disabled person rather than somebody going online and getting it from somebody in California. I would just put forth those reservations or concerns about it as we move forward.
- **Marshall:** And, again, for the public: What we would propose today, there are going to be a lot more bites at the apple because the bill would be introduced either at the House or Senate. It would go to a subcommittee, so there could be recommendations or changes at that time. You have a lot of different steps along the way. If it passes both houses and goes to the Governor, even the Governor can make amendments. Do you have anything specific that you would like to change?
- **Carr:** If we had a licensed Virginia therapist being able to give the certification that the person was disabled and having that tightened up.
- **Marshall:** Delegate Peace, did you all look at that?
- **Peace:** I believe we did. If you have the bill in front of you, it talks about a therapeutic relationship. I think that would address the issues of online. It's hard to have a therapeutic relationship with a five-minute consultation with someone. Off the top of my head—thinking out loud is dangerous—limiting it to a Virginia-licensed provider may have some constitutional challenges or questions related to that. Plus it may be someone who has moved from out of state who's had a relationship with a provider that has the letter. We don't want the housing provider or the rental manager to really look beyond the face of what is presented other than the fact that there would be a therapeutic relationship. Basically, trying to get at that

online issue. I don't know if Mr. Dicks has any other thoughts regarding that concern. I think that is a concern of the work group, but we may have arrived at the best place for that.

- **Dicks:** This is Chairman Chip Dicks on behalf of the Virginia Association of Realtors and the Northern Virginia Apartment Association. If you have the line version of the bill that I have, I direct your attention to line 174.
- **Marshall:** We don't have numbers on ours.
- **Dicks:** It's paragraph D, subparagraph D, and 3696.1.3.1. It should be toward the end of the bill. In paragraph D, about four lines down, it defines therapeutic relationship. And the definition I would present to the members of the Commission is consistent with federal law, the federal fair housing law, and the state fair housing law. What it provides is that you have somebody who is a medical healthcare provider or a doctor of the healing arts, if you will, under state law. And then somebody with an unrestricted state license, like a doctor from Duke University or whatever.
 - And then federal law also provides that a person from a peer group who does not charge a fee or implied financial requirements, and who has actual knowledge of the requestor's disability could also be a therapeutic provider or a third-party verifier. And then the last provision is a caregiver with actual knowledge of the requestor's disability. That would be consistent with the requirements and the various persons under federal fair housing and state fair housing laws that could be a third-party verifier of a relationship.
- **Lafayette:** Mr. Chairman, one other question, if I might. In Subsection F, I guess my question would be Why a misdemeanor? Why not a civil penalty for the person who is misrepresenting their need?
- **Dicks:** Mr. Chairman, I would say to Ms. Lafayette that I don't believe that's in the version 7 draft that was the most recent version that was considered by the work group. So maybe the version that you have in your binder is a previous version that has the penalty provision in there, which was taken out in the last work group discussion.
- **Marshall:** So in the final version, what is the penalty?
- **Dicks:** The final version, Mr. Chairman, since penalties are otherwise provided in the Code, it was the thought of the work group that no additional penalty provision needed to be part of this bill.
- **Male:** That would probably also address any potential fiscal impact a change in that law regarding a new criminal penalty would bring.

- **Dicks:** And Mr. Chairman, I would say in closing that the purpose and the benefit of the last version of the bill, version 7, basically trued-up all of the questions of the little nuances between the federal fair housing law and the state fair housing law and regulations and made sure all the language was identical and that we had those provisions built into the bill.
- **Marshall:** Let's see if we have any other questions for Mr. Dicks. Thank you.
- **Dicks:** Thank you, sir.
- **Marshall:** Do you want to take these as we go?
- **Peace:** Yes, I can just go down the list.
- **Marshall:** All right.
- **Real Estate Disclosures (No Legislation)**
 - **Peace:** The next issue the work group considered was a matter related to mandatory real estate disclosures. House Bill 1264, Delegate Robinson, had an enactment clause that directed the Housing Commission to study provisions of the Virginia Residential Property Disclosure Act, 55-517 et seq., to determine whether the mandatory required disclosures should be consolidated or could be consolidated or otherwise addressed in a more comprehensive way. We get a number of bills each year that add to the list or ask us to consider a change in policy, adding to the list of those mandatory required disclosures. Later in the meeting, we're going to consider another one in that regard.
 - The work group considered the legislation and its directive and makes no recommendation regarding further legislation concerning that mandatory or required disclosure.
 - **Marshall:** Any questions? Okay, thank you.
- **Impact of Tenant Bankruptcies on Landlords (No Legislation)**
 - **Peace:** Next was the impact of tenant bankruptcies on landlords. Senate Joint Resolution 89, by Senator DeSteph, brought forward a unique and interesting issue where there are situations where tenants declare bankruptcy. And it prevents landlords, property managers, and others, from pursuing all available remedies in the event of a breach of a rental agreement. This often leads to a tenant to remain in possession of that property and sort of protected in that regard.
 - We explored the options as the resolution had asked. I believe it was tabled in the Senate but referred to us to explore what potential actions

would be considered to remedy this inequity. There was no recommendation by the work group, but I understand that this is an issue that we want to continue to monitor and get information on going forward. But no formal recommendation in terms of legislation for the 2017 General Assembly session on this issue brought by Senator DeSteph.

- **Marshall:** All right, any questions? All right, let's go to one that should not take too much time.
- **Peace:** I don't know if Senator Locke's going to do hers from the phone.
- **Marshall:** Let's go ahead and do short-term rentals while you're on a roll.
- **Peace:** I'm on a roll. Very good.

2. Short-Term Rentals

- **Peace:** Thank you, Mr. Chairman. Thank you for the privilege of chairing this work group. It was the highest honor.
- **Marshall:** Well, thank you so much for your 12 hours of blood, sweat, and tears.
- **Peach:** Twelve months. I also want to thank the work group members because their seat time and endurance was significant. I thank all who participated, both the membership, actual legislators, others members of the work group, members of the Housing Commission, those in the public who attended the meetings, certainly staff put a lot of hard work into the endeavor. I think all would agree that they learned a lot about the issue, learned a lot about the complexities that are presented. And I think that what we have, the option today, is to continue to advance that conversation.
 - We have done significant due diligence—as the Chairman referred, over 12 hours of hearings. We have embraced, or at least heard, how we might as a state embrace the sharing economy and the important role that Virginia may play in this particular question in the nation.
 - I would say for members of the Commission that we've made progress based on the charge that the enactment clause on Senator Vogel's bill presented us for consideration. The work group actually approved and forwarded for the Commission's consideration several principles that any bill on this subject would address and would need to address sufficiently in the General Assembly session upcoming. I imagine there will be a number of bills—or certainly the potential for a number of bills—to be introduced. So the work group, given the time that we had, forwarded certain principles as a three- or four-part test that those bills would have to be judged by.

- To that end, there's a draft in your binder, which is not necessarily a reflection of consensus of the work group, but it was an attempt that counsel has made to further the policy, the issue, and the conversation that we've had for the past year.
- I want to thank Lisa Wallmeyer and Elizabeth, publically, for their hours of dedication. I know counsel has done a valiant job to try to bring some cohesion to disparate parties and interests and the various stakeholders that have manifested over the past 12 months or so.
- I know that this Commission works by consensus. I know that Chair really hopes that that is the case in anything that we might recommend to the General Assembly. My perception is that local government will be the one stakeholder that would be reticent to any embracing of any principles at this time. I think they're just simply opposed and want local control over that issue, and we respect that and understand that position.
- In terms of the principles that were outlined, Elizabeth does a great job. We record all of our sessions, and then she transcribes minutes. It's quite a voluminous set of information. But just to try to distill it down to its most simple form, in terms of the principles that the work group analyzed and moved forward for recommendation would be that any legislation would apply to all types of properties, statewide policy, but differentiate between properties using a tiered system regarding primary and secondary residences.
- The other statewide component would be the central tax collection and remittance to localities. And there would be a local option for ministerial registration. That's in response to repeated requests for information from the local government to know where this activity is occurring and taking place. And I think that's actually a very reasonable request on behalf of localities for a ministerial or de minimis registration requirement. To that end, we would also, though, have an exception for licensed realtors who are in the trade—that was a specific request of industry—and also the property managers who deal in that same type of commerce.
- So really sort of distilling down, if I can, to the simplest—a three-part test would be as I've stated. That would be what I would hope that we would consider in terms of a recommendation. Whether we have a quorum or not, the sense of the Commission would be that we would want a statewide solution to the problem, and it would contain those elements. If anyone gets the clips, every day I feel like there's a different question, conundrum, issue raised in a different part of the state. And I think we're just going to get to the point where it's going to be hard to discern and difficult for the market to have any success in any uniform way.

- So, Mr. Chairman, I present that as a summary report of our work and thanks for all those who contributed and participated along the way.
- **Marshall:** Thank you, Delegate Peace, and the people who served on that. I think this kind of shows why we have a Housing Commission. We had this bill that came forward. If we had to try to get this done in session, it would just never happen. I'm not quite sure it's going to happen now, but at least we had 12 hours of thought about this. Could you go back to those three to make sure that we're all on—
- **Peace:** Yes, three or four. Mr. Chairman, there needs to be a statewide solution to this issue. And that solution would apply to all types of properties and differentiate between properties using a tiered system related to primary and secondary residences.
 - There would be a central point of tax collection. We heard from Tax. They're very comfortable with the software. They're very comfortable with how the process would work. That has been the case since January, in terms of the position of the Tax Department.
 - Then there would be a local option for a ministerial or de minimis registration requirement for those conducting that commerce in a particular jurisdiction to that local government. There would be small exceptions for a licensed realtor and property managers. It really would capture the individual who says For a few nights a year, I would really like to make a little extra money and let my residence to someone using the online platform, which most commonly is known as Airbnb, although there are others.
- **Marshall:** Let's get a little bit closer. Instead of 30,000 feet, let's go to three feet. So, the statewide solution. Talk to us a little bit more about that. How you see that? Define that a little bit closer.
- **Peace:** Mr. Chairman, I would say it would be like any other legislation that we have in terms of applicability, unless there are exceptions or carve-outs or we're directing it only to particular jurisdictions. We've seen where that can be problematic where we get the Christmas tree effect. Each jurisdiction wants to join a particular regime that has been embraced by state lawmakers. And it wouldn't solve the problem of the effect of Commonwealth where everybody is treating this particular industry in a different way. There are a lot of analogies made to Uber, and I think that's probably warranted in one respect in terms of the sharing economy. But in terms of practical implementation, we have DMV as a central contact. In this case, the analogy may be more on Tax for that purpose. But in terms of land use and other issues that are local in nature, we have over a hundred jurisdictions. So to apply evenly and across the board a set of standards that would govern this particular industry and this activity in the Commonwealth.

- **Marshall:** The next was all types of property. Explain the tiered system.
- **Peace:** I think that's to be determined to the extent that there is such an infrequent activity or such infrequent transactions that many in the work group believed that it shouldn't require any reporting, any type of registration. Then there is a step up from that, which would be dealing with other periods of time. And then there's one beyond that for greater periods of time. And then there are the different types of residences.
 - If the commissioners will recall, my legislation in the House, which passed the House, dealt only with primary residences. But there were concerns raised from various parts of the Commonwealth that we wanted to have some governance over the secondary residences or vacation homes, particularly in the Virginia Beach region. There were other parts of the state that were also represented.
 - That, I think, is something that can be worked out, but you have to get through the first question, which is whether there should be a statewide policy that should apply in all circumstances in all jurisdictions.
- **Marshall:** Okay. Then central tax collection. I assume that we're talking about either a county or a city or even a town would collect, and then they would make the payment.
- **Peace:** That would be what the local governments would prefer. Based on the nature of this enterprise, a central remittance to Tax and then distribution from that central point back to localities pro rata based on the level of activity occurring in those jurisdictions. There is certain software that can be tested that we had presentations on by Mr. Mark Haskins that the Tax Department is comfortable with, and it's very similar to how retail sales and use is collected and then sent back to localities based on what they are properly owed. So the platform would essentially collect the tax at the booking registration, and those are technical terms. But essentially take that portion and send it to Tax; Tax would send it to the localities.
- **Marshall:** And then finally, local option. Explain how broad that is.
- **Peace:** The local option would be kind of going back to the tiered concept where there would be ministerial registration based on the frequency of the activity in a particular residence, in a particular dwelling. So if someone is doing it several weeks of the year, that would trigger the registration. And that's in response to local government's concern that these are things that are happening too often in their minds, and they don't know where they're happening until something is reported to law enforcement or there's some other concern for safety or welfare, etc. This may be more my personal view, but I think it's the sense of the work group that a ministerial registration is certainly reasonable in that regard.

- **Marshall:** What the short-term rental work group is asking or requesting is a little bit different than policy in the past for the Housing Commission. You're not asking us to move this bill forward; what you're asking for are those four bullet points to go forward as a recommendation of the Housing Commission that any bill that passes the House, passes the Senate, and goes to the Governor would have those four bullet points in it.
- **Peace:** That's correct.
- **Marshall:** Okay. Questions. Yes, David.
- **Delegate David Bulova:** Thank you, Mr. Chairman. This is kind of a question directed at Delegate Peace to help me get a sense of where I want to go today. I guess, first, let me just say this is a really good process, and I want to congratulate Delegate Peace on organizing this. It was 12 hours, but it was 12 hours well worth participating in, and I very much appreciate that.
 - What I would like to see happen is to make sure that the process doesn't stall. I see great utility in making sure that the stakeholders continue to focus and move forward with the possibility of coming up with a resolution during the '17 Session. I guess where I'm struggling is whether my concerns can be reconciled with the four principles that have been laid out. And so that's kind of the question that I wanted to go ahead and pose to you.
 - I do see utility in some kind of statewide framework. I think that would be very, very helpful. I see utility in the hosting platform collecting those taxes, both as a service and also to make sure that you're not presenting liability for those who might not be as diligent about collecting and submitting those taxes to the localities. I do remain very concerned about remitting those up to the state level and then having those come back to the local level, both from an enforcement standpoint and also an accuracy standpoint. And my commissioner of revenue has expressed on numerous times frustration with the existing system where people get confused all the time between Fairfax County and the City of Fairfax. So I wanted to see, number one, if one of the principles you had in there, whether that is something that could still be considered and accommodated.
 - The other part is that I do remain concerned about the infringement on local zoning authority. I'm not sure to what degree we can still work within those parameters. I actually kind of like where the bill that came out last Friday went where it was a bifurcation between the de minimis and then everything above those 14 days you could continue to go ahead and regulate just like any other zoning use. I know that 14 isn't a magic number, but I thought it provided at least a bright line. And I know local governments aren't completely happy with that, but it seemed to be headed in the right direction.

- With that Mr. Chairman, I'd love to get a response from Delegate Peace about whether those concerns can be accommodated within that policy framework, because I do want to see the process continue on. I don't want to shut it down here.
- **Peace:** Thank you, Mr. Chairman and Delegate Bulova. You're always a very valued member of any body that considers housing policy. And I speak from experience on our subcommittee and General Laws in the House. Always raising very important questions for our consideration. And thank you for embracing a statewide framework.
 - I think the concept of the ministerial registration and the concerns that you raised from your local government about accuracy will work in tandem as you're able to remit to the Tax Department and then have that delivered back to the locality. When you're above a certain number of transactions, if you will, if the frequency of days is triggering that registration there will be a way to kind of understand how that lines up with the taxes that are collected and then sent back. I can assure you that the Tax Department wouldn't mislead us in the sense that the software that's used is well respected nationally. It's one of the Cadillacs of software that allows for that to be conducted.
 - I think that going to our statewide concept as well, having that central point of tax collection and remittance back to localities, furthers that type of commerce and makes it easier for those who have hosting platforms to be able to link up with actual hosts to provide that service.
 - I think that your concerns are certainly well taken. But I think that the principles actually really address many of those concerns, if not all of them.
- **Palen:** Mr. Chairman, Delegate Knight would like it on record that although he's not here today that he is in favor of registration at the local level and throughout the state, but he wants zoning and taxes also to remain at a local level.
- **Marshall:** Okay, thank you. Other questions? George.
- **Senator George Barker:** Mr. Chair, as the person who made the motion at the last work group meeting on this, I'm trying to recall everything that was built into that motion. I think we do have the framework that has been laid out here and was laid out in the submission that we got from Delegate Peace.
 - But I also recall, if I'm correct—I want to make sure I'm correct—that we had asked the stakeholders to continue to meet to see if they could come up with something that they could all agree with that would be consistent with these principles. I assume the fact that we have not heard that there

has been success on that means they may well have met, but they have not reached agreement on things. I just want to make sure that my interpretation, inference there, is correct.

- **Peace:** Mr. Chairman, Senator Barker, you are correct. That was the directive. And Ms. Wallmeyer did a great job to try to advance that conversation. But the bill that was put in your folder does not represent consensus among stakeholders in terms of peace in the valley, but certainly is part of the conversation going forward within the structure that the work group has outlined. I'm hopeful that that will advance this conversation.
 - I shared with the Chairman earlier it was interesting to have worked with some of the stakeholders who at the beginning were extremely opposed to any legislation who now really want legislation. And then there were those who really wanted legislation who are okay with no legislation. That seems to be the art of a good negotiation, right, if everybody's unhappy or otherwise.
 - So I think that we are moving forward. And the motion that you made in the work group and outlined in these principles, I think, will stand us well in the session to judge any draft or bill that's filed.
- **Barker:** Just a quick comment, Mr. Chair, if I might. I think what is outlined here is a proper step forward. I think what we need to do is rather than coming up with specifics today is see if the stakeholders can reach agreement. My assessment of things is they're not as far apart as many people thought they would be at this point. So I think it is certainly possible to reach a compromising consensus on things. I think the issues surrounding primary residence, secondary residence, the de minimis, and the tiers, those are the critical things that need to be worked out. And I think those can best be worked out among the stakeholders. Obviously, if they don't do that, we'll have to step in and take that on. But I would certainly love to see them take a crack at it and see if they could reach agreement on that.
 - One of the concerns I had about the draft here is it sort of started at one end of the spectrum, and there's a lot more that could be concerned. For example, it lists a de minimis use as only for primary residence for 14 days so that someone who has a vacation home and they want to use it once a year would not even be covered by a de minimis. And also I think there are certainly events—the cycling championships that were here, the marathon that's here in November—where there are people who might be willing to participate for some special event like that but would not be regular users. I think we need to be able to provide options and protections for those.
- **Marshall:** Thank you. Questions? Yes, Senator Stanley.

- **Senator William Stanley:** First, I guess, partly a statement and partly a question. And if I may, Mr. Chairman, I thank you for your time. And certainly I thank Delegate Peace for the hard work that he's put into this. And I know there have been some trying times. I wish I could have been involved in more of the work group. They always seemed to be scheduled when I could not be there. I don't know that that was intentional after my first appearance.
- **Barker:** There would have been more trying times if you were there, I think.
- **Stanley:** And certainly I want to thank Ms. Wallmeyer on a great effort. I looked over the transcript. We certainly have e-mail exchange. And I looked over the transcript and thought she captured as best she could exactly where at least Senator Barker was. And of course nothing is perfect, but I think with this all being all over the map every now and then, I think she did the best she could. I'm actually pleased with her attempts here. As much as I have concerns about Airbnb and this type of sharing economy issue, I certainly think that this bill gives me the least amount of agita that I've had about this issue.
 - My concern is, Mr. Chairman and members of this committee, is that without a consensus—and as we're seeing right now in certain jurisdictions including Arlington most recently—we have some localities that are passing, and I think enacting, acting upon the powers that we give them with relation to zoning and land use and the like. My concern that I have is that this company has shown itself—Airbnb, in particular—to engage in a particular course of aggressive litigation in cities such as San Francisco and New Orleans and New York City, suing those local jurisdictions when the local jurisdictions put in place certain regulations that the company does not like. And in doing so, dragging them through that litigation at a cost.
 - These larger cities such as San Francisco and New Orleans, Mr. Chairman, can certainly maybe bear the cost of a legal challenge. I'm concerned that our jurisdictions like Arlington and even Franklin County or smaller jurisdictions that put in reasonable regulations at this time, if there is no bill, will then be subjected to the litigation tactic. I think they probably have done a risk analysis, as they mostly do, and have decided that on a cost benefit this is much more in line with their belief in their business model, so we're going to see that litigation while we try to work this out.
 - I would think that totally unwise on the part of the corporation, but I have seen them take actions that have been, I think, counterproductive, including but not limited to, Mr. Chairman, the fact that this city right here that we are sitting in, the City of Richmond, does not allow for such short-term rentals, and this company continues to flout the law, even having a button on their platform that allows you to rent through Airbnb a place in Richmond while it is illegal. I do not believe that any corporate model or

corporation should promote or support criminal activity or ignore the law. That is one of my biggest concerns that I've seen in doing this.

- Maybe their belief is, Mr. Chairman, that we in the government are creaky and slow, our machine works slowly, the wheels turn slowly, and therefore we must catch up to them and submit to them rather than they making sure that they comport with the traditions, laws, and values of the Commonwealth of Virginia.
- That is one of my concerns in Arlington, quite frankly. I think if everybody was happy with the Arlington model, if Airbnb was happy with that, then maybe we could even make progress on that. But what I'm to understand is that even though an Airbnb representative said publically in the newspaper that they were satisfied with the Arlington result, I have then, in fact, heard that that is not a model that they want repeated anywhere else.
- No legislation right now. What we're talking about is making a recommendation, Mr. Chairman, that the four points that Delegate Peace has made should not be the only ones. I think there needs to be some acknowledgement that we as a state government under the Dillon Rule limit what our local governments can and cannot do and sometimes tie their hands in terms of revenue generation or regulations. Zoning laws, land use, health and safety issues we've left to the province of those localities to make determinations for themselves. There may be many more points than the four points that we've talked about that should be explored in recognition of, really, the rights of those local governments to make determinations based on the citizens that they serve at the local level.
- I'm reminded that I like to say sometimes about this issue if I wanted to live next to a hotel, I would have bought a house next to a Marriott or Holiday Inn. There are those out there who are neighbors of people who are renting an Airbnb who probably don't like that and worry about their home values.
- What we must always remember, Mr. Chairman, is that my property rights, like my civil rights, end where Delegate Peace's begins or my neighbor's begins. And sometimes we understand that there is a reason for zoning that respects that, that when people move into a quiet neighborhood, that's where they want to move into, not a commercial district. They want to know their neighbors. They want to raise their children with at least some feeling of safety not of some person coming in that they don't know that possibly could harm not only their quiet tranquility but also their children.

- So I think there are more points that need to be done, that need to be looked at, Delegate. I think, in addition, we have to look at issues of liability. I have asked over and over, Mr. Chairman, for the liability policy that they offered so freely. When I guess I was cross-examining Airbnb's representative a little too tough, she offered this liability policy. I've asked for it. I've e-mailed and asked for it. I've never gotten it.
- I think this state owes this level of protection and that's to protect the consumer. And the consumer comes in two varieties. One is the person that uses the platform to rent their residence, Mr. Chairman, but also the end-user who comes and rents that place as well. I'm telling you right now I bet the insurance component of this, no insurance company provides a packet of insurance—I have rental properties in Charleston and Wintergreen that I have commercial lease and liability that your homeowner's policy is not going to cover. Or at least the homeowner who may be wronged or the person who is wronged in the home, when they seek insurance coverage will find that that insurance company has filed for a reservation of rights or had denied coverage because they weren't contemplating the relationship created by this platform of Airbnb. That protection is not there. And without knowing what kind of liability protections through insurance is there, I have certain concerns that have not been answered.
- Finally, one of the questions I asked, Mr. Chairman, during the work group was if Airbnb collects \$100 or a person's renting out their room for \$100 and they encourage them to collect the taxes, and so the taxes let's say are 10 percent, so it's \$110. What is Airbnb's fee? Airbnb takes a fee, a percentage from—and they said not the 100 but the 110. Thereby, they were taking a percentage fee from taxes, taking a slice of what is money that should be returned to the locality. I don't have any assurances that that's not going to be the way, even in this draft, that the collection of the taxes won't be taxes minus their fee on the top of the taxes.
- Ultimately, Mr. Chairman, I think we need to make sure that we're paying more attention to the locality. I think, ultimately, what we need to do is we need to make sure that this industry understands and respects the law as established at the same time that we try to modify it to accommodate this new industry. If it is not willing to do that, Mr. Chairman, then I am unwilling to ever believe that we stand in any position to accommodate them to their liking and otherwise subject ourselves, our Commonwealth, our people, and our localities to ridiculous litigation because as a petulant child they did not get their way.
- And I thank you, Mr. Chairman.
- **Marshall:** Thank you, Senator Stanley. Any other comments? We understand now why it went 12 hours. There is a lot of passion about this.

- **Mark Flynn:** Mr. Chairman, this is Mark Flynn for the record. Before I start, because I lecture on the Conflicts Act and write about it quite often to the extent that some call me Father Flynn at times, I probably should do the certification required by Section 2.2-3114(f), and that is that the transaction of Airbnb or the short-term rental, the nature of my personal interest is that I represent the City of Richmond, Prince William County, and Chesapeake. And those represented in the localities, I'm part of a group of three or more. I do certify that I can participate in the transaction fairly, objectively, and in the public interest.
 - With that disclosure aside, from the local government perspective—and I would ask if Elizabeth could hand out a letter from the City attorney for Fredericksburg—it actually captures the local government perspective very well. And I thought it was just useful, and it doesn't take that long to read.
 - On the tax part, the central collection, I think there's probably—and this is me speaking—some room to maneuver there for sure. But the issue is that the state Tax Department, this isn't their tax, and they're not going to have the real incentive to do the auditing required to make sure for a given locality that the taxes are reported and paid accurately. As a result of that, if there is a central tax collection—and that's a matter for discussion—the local tax official, usually the commissioner of revenue, should definitely have access not to some anonymous number, but access to the actual information where it's that commissioner's responsibility to determine whether local taxes are being collected and paid. So that's one part on the tax, that there needs to be access to the information.
 - On the land use part, I think that there certainly is some room for the de minimis activity where it would be treated in something of a ministerial manner like a home occupation permit. That's in my experience as a local government attorney. It's just looking at what's the impact on the immediate neighbors. That's really what it's all about. It takes no time and doesn't really cost much money.
 - I think local governments are very much willing to move forward in working on trying to come up with a solution that does work really have some concerns, some of which Senator Stanley expressed and Delegate Bulova expressed. Very much the same thing. Thank you.
- **Marshall:** Okay. Other questions or thoughts? Senator Locke, you have a comment?
- **Palen:** Senator Locke?
- **Marshall:** Okay. Do we have Senator Locke on the phone? Does she have a comment?

- **Palen:** Did you have a comment on Airbnb that you wanted to share?
- **Locke:** It's in the letter. I can barely hear.
- **Marshall:** Well, we can hear you fine, so why don't you tell us while we have a few minutes, if you'd like to, about what your letter says.
- **Palen:** Did you want me to read the letter to the Commission?
- **Locke:** Yes.
- **Marshall:** How many pages is it?
- **Palen:** On behalf of Senator Locke: I'm sorry that exams at Hampton University prevent my attendance at the Virginia Housing Commission meeting on December 14, 2016. I know this is an important meeting with several matters to be decided before the start of the session.
- **Palen:** I did want to share my thoughts on the Short-Term Rental Work Group. I've spoken to local folks in Hampton and Newport News. This includes local government representatives, as well as local B&B and Airbnb operators. All are in agreement that short-term rentals should be under the purview of local government for zoning issues, permitting, as well as for taxation.
 - My constituents specifically noted the current Airbnb-listed accommodations are not held accountable by the Health Department, the Fire Department, Code Compliance, and they don't pay any related fees. There should be equity and fair competition on the playing field.
 - Further, short-term rental owners are not promoting tourism and hospitality. They should be legitimized through certification so that a vital tourism market is accentuated.
 - It is my understanding that San Francisco, the home base of Airbnb, now has, or soon will have, the technology to assist local governments with registration and reporting. This is great news and should be the same in Virginia. That is, universal registration of all short-term rentals, including occasional rentals at the local level.
 - Commissioners of the revenue or local finance directors should have the same financial audit capabilities here as they have under existing law for other businesses. Registration will readily facilitate zoning and other laws that protect the public health, safety, and welfare. This is a fairness issue to me, as currently any home-based business has a registration and a taxation requirement with the local government.
 - Likewise, I think the short-term rental companies should agree that they will de-list and enforce compliance with bad actors. This will help local

government immensely and keep all the good actors doing the right thing and hopefully continuing to be successful.

- I do understand that there are many short-term rental or Airbnb-type operators that are managed by a licensed professional or a licensed bed and breakfast. I feel strongly that there should not be any additional registration requirements on these operators.
- Regarding the issue of taxation, I'd like to see local taxes collected at the local level. This makes sense to me and does not seem particularly onerous as other national franchises have figured it out and do it routinely. Should it be the consensus of the Housing Commission to authorize state collection of local taxes, local governments should have the ability to audit at the local level. Further, some sort of kill switch and trustee language should ensure that localities get all the local tax dollars due them.
- Again, I'm sorry that I cannot be there today in person to share these concerns. I trust that this note represents my feelings on these issues or, more importantly, the feelings of those I represent.
- Thank you very much. Sincerely, Mamie Locke, Senate District 2.
- **Marshall:** Elizabeth, ask Senator Locke if she has any additional comments.
- **Palen:** Senator Locke, do you have any additional comments for the group?
- **Locke:** No, that represents my feelings on the matter.
- **Palen:** Thank you very much.
- **Marshall:** Do you have any questions? All right, moving forward then. Do you want to make a motion?
- **Peace:** As the chair of the work group, I don't know if we treat it like a subcommittee as we're in session where the recommendation of the subcommittee work group is the motion that doesn't require a second. Or if Senator Barker, who made that motion, would renew that now. That may be more appropriate.
- **Barker:** I'd be happy to renew the motion that I made at the last meeting of the work group, which would be to incorporate the points that have been outlined and to encourage the stakeholders to work to find some compromising consensus on things to provide a specificity to enact these.
- **Marshall:** Let's make sure we know what we're voting on. What the recommendations are—as we talked about earlier—is that what you would ask for, Delegate Peace and Senator Barker, is that a recommendation would come from the Housing Commission that any bill would have—and I'll mention them

here in a second—we are recommending any bill to have these four. We can't tell people what to do, but what we're doing is a recommendation. So that's a statewide solution; all types of property; that tiered system we talked about; central tax collection; and a local option for the registration.

- In the House, if they happen to go to—the bills will go to the subcommittee that you chair.
- **Peace:** I don't want to presume to know the mind of the Speaker of the House.
- **Marshall:** That was going to be the next question. In the past, these bills have gone to your subcommittee, so if a bill were to come forward that did not meet this, would that bill not receive favorable consideration?
- **Peace:** I don't want to bind members, either, but knowing that Delegate Bulova serves on that subcommittee as well, and if Chairman Gilbert were to refer that bill or bills to the subcommittee, we would have to have a hearing. But certainly would articulate the sense of this Commission and demand as much as possible that we would incorporate those principles in any bill that would be recommended for reporting out of that subcommittee. And I would believe that the Senate would operate in like fashion.
 - I know that we heard the comments passionately articulated by Senator Stanley for safety and health concerns. I don't think that these principles are exclusive. In other words, it's really more including, but not limited to, in that sense. But this is a foundation or baseline that we would like to see in anything.
- **Marshall:** Okay. So let's get this on the table here. You made a motion that this is four principles that you would like to recommend that would be in any bill. Correct?
- **Stanley:** Yes. Those along with things such as recognizing the limitations such as [unintelligible] documents, those types of things so that it does not attempt to supersede those.
- **Marshall:** All right, do we have a second?
- **Male:** Second.
- **Marshall:** We have a motion and a second. Any discussion?
- **Peace:** Mr. Chairman.
- **Marshall:** Please.

- **Male:** Mr. Chairman, my question with the motion on the floor, it sounds like to me that these four principles—and I don't know if it's including but not limited to as part of that language, which certainly I think we should not hamstring ourselves to just these four issues. But it seems implied in the recommendation without stating that by voting for this, it would be this Commission's recommendation, basically, that such localities could not severely restrict and/or prohibit Airbnb-type companies from operating in their jurisdiction. Am I correct, sir?
- **Marshall:** You're asking the wrong one. Let's ask Delegate Peace.
- **Peace:** Not speaking for the person who made the motion, but speaking for him, I would say that it would open the door that this would be permitted activity across the Commonwealth, but with a certain structure in place to govern it in a uniform way.
- **Male:** Mr. Chairman, further question.
- **Marshall:** Yes sir.
- **Male:** So this would only be parameters and limitations by which the locality could limit and/or regulate the industry, but could not otherwise prohibit. Am I correct?
- **Peace:** I would say so.
- **Male:** Thank you, Mr. Chairman.
- **Marshall:** Okay. Delegate Bulova.
- **Bulova:** Thank you, Mr. Chairman. I guess let me preface that I want to vote for something in an affirmative way because I think that there is utility in what we're doing. I also want to keep my options open. And I'm a little nervous about the four principles. I want to kind of express support for some kind of statewide structure in a very broad sense, a desire to continue to move forward with the stakeholders, but not necessarily to limit ourselves to any of those four principles. And so, I guess depending on how this initial vote goes, I might be voting now to keep my options open. But if we have another round, I might put that on the table, which I think does keep our options open, but also gives us at least a direction forward.
- **Marshall:** Well, this is a crazy place. I was actually a co-patron of a bill and then voted against it. George?
- **Barker:** Mr. Chairman, just to provide clarification on one point. In making the motion, I was in no way attempting to limit what's in a final bill to just these

topics. And certainly the types of things that Senator Stanley and others have raised certainly could be incorporated in a final bill.

- **Marshall:** On the Senate side, I assume it goes to General Laws also.
- **Bulova:** Mr. Chairman and members of this committee, I would assume that this is going to come to Local Government, which I am the Chairman of.
- **Marshall:** Uh-oh.
- **Bulova:** In fact, that's where it went before the patrons asked it to be referred to General Laws last year. I don't know that I would accept such a request at this time.
- **Marshall:** So why did we have this whole discussion?
- **Locke:** Elizabeth, I have a question.
- **Marshall:** We have a question from the phone.
- **Palen:** Go ahead.
- **Locke:** Okay. What's being proposed is legislation that would create a statewide option. Is that correct?
- **Marshall:** It's not legislation.
- **Palen:** I believe what is being proposed are some concepts. And yes, you are correct. It would provide a statewide option on some of the topics.
- **Locke:** Okay. But the statewide option, taxation would be collected how?
- **Palen:** I believe that's still under consideration, but it would be through the Department of Taxation and then through some sort of safe box given back—kept in the state government and given back to the localities.
- **Locke:** Okay. All right.
- **Marshall:** Other comments? You made the motion, so you want to go forward with the motion?
- **Barker:** Yes.
- **Marshall:** All right, so we have a second and you want to go forward. Any further discussion? Yes.
- **Female:** Review for me again the options for the localities here.

- **Marshall:** You made the motion, so, George.
- **Barker:** Yes. The options for localities, the localities will receive the taxes. They will be collected by the entity providing the hosting platform, and then will be distributed to the appropriate localities through the normal processes that the state uses in these types of situations.
 - The locality has the ability to require ministerial registration. The locality, depending upon what's developed, may have additional authority related to tiers so that those operators who lease this out on a regular basis are affected differently, and the localities have more ability to control them than someone who's using it very infrequently. That's to be determined because there are no specifics in there right now.
 - And the localities have the ability to enforce their existing zoning regulations in the various neighborhoods on these entities just as they would they would the property owners themselves. So they could continue to do that.
 - Some of the types of things that we heard that are egregious activities that would not have been permitted by someone who was a homeowner, disrupting an entire neighborhood, would also be prohibited by a locality for these operators as well.
- **Palen:** Senator Barker, can you please clarify. Did you mean localities can enforce existing zoning regulations? Do you mean by that that they could not have further zoning regulations?
- **Barker:** That certainly needs to be worked out. But one of the things that was incorporated—there are two different issues that I think are important there. One is I think there was contemplation in the discussion that there might be additional zoning regulations that would be applicable to those people who lease the properties on a very regular basis, so they were running it more as a business rather than just sort of a home or a secondary home or weekend home that they had. I think at the last meeting or the meeting before that, I think it was talked about if they rent it more than 60 days a year, they would be potentially subject to additional regulation that existing residential property is not. So that is certainly an option to be incorporated in a bill.
 - It was incorporated in the draft that Ms. Wallmeyer put together to make sure that they could enforce all existing zoning regulations in those communities. The example that was used was someone coming in to film something in the streets and disrupting the neighborhood and that type of thing. If that's not permitted for the homeowner to do, it's not going to be permitted for someone renting out the home to be able to do that.

- **Bulova:** Mr. Chairman, just for further clarification from Senator Barker on that top tier that he described related to additional requirements. That would be for those occurrences that are more frequent in nature without actually prescribing what the frequency is at this point. And also the exception on the registration for realtors and property managers.
- **Marshall:** Further questions, comments? All right, so let's get the motion before us. Elizabeth, do you have it down? Do you want to read it to us? All right, I'll try here.
 - So the recommendation is that any bill that would go forward that a statewide solution would be part of that; all types of property; we'd have a tiered system. The central tax collection and payment, and then a local option would be part of that also. That is the motion by Senator Barker, seconded by Peace. All.
- **Palen:** Senator Locke, did you get that?
- **Locke:** Yes. My hand is not raised.
- **Marshall:** Raise your hand again. Do a roll call then.
- **Palen:** Senator Barker.
- **Barker:** Yes.
- **Palen:** Delegate Bulova.
- **Bulova:** No.
- **Palen:** Delegate Carr.
- **Parr:** No.
- **Male:** No.
- **Palen:** Delegate Peace. Senator Stanley.
- **Male:** No.
- **Male:** No.
- **Marshall:** We have three yeses.
- **Palen:** Senator Locke is a no.
- **Peace:** Mr. Chairman?

- **Marshall:** Yes?
- **Peace:** Can I make another motion then?
- **Marshall:** Sure, absolutely.
- **Peace:** I would move that the Commission support some type of statewide framework in a broad context and that we also support continued discussion among the stakeholders for hopeful consensus going into the 2017 Session. I think that's relatively broad, but I hope it kind of sums up the sense that there is some utility in a statewide framework, regardless of what that might entail.
- **Marshall:** Okay, do we have a second?
- **Carr:** Second.
- **Marshall:** All right, discussion. Seeing none, Elizabeth, let's do another roll call.
- **Palen:** Senator Barker.
- **Barker:** Pass
- **Palen:** Delegate Bulova.
- **Bulova:** Yes.
- **Palen:** Delegate Carr.
- **Carr:** Yes.
- **Palen:** Delegate Marshall.
- **Marshall:** Yes.
- **Palen:** Delegate Peace.
- **Peace:** Of course.
- **Palen:** Senator Stanley.
- **Stanley:** No.
- **Female:** Yes.
- **Male:** Yes.
- **Palen:** So we have one abstention.

- **Palen:** Senator Locke?
- **Locke:** I didn't hear that.
- **Palen:** Senator Locke, I believe that your vote is yes. It is to go forward with some sort of statewide solution and continued discussions in a very broad context?
- **Locke:** I'll go with that.
- **Marshall:** Okay. All right. Anything else on short-term rentals?

[Break for lunch.]

3. Neighborhood Transitions and Residential Land Use

- **Marshall:** We will resume now since I have finished my lunch. Next on the agenda is we have a bill that was brought by me at the request of the City of Danville. Corey Wolfe with the City, would you kind of give a 30,000-foot view of what the problem is and what we're trying to solve? And welcome.
- **Corey Wolf:** Sure. My name is Corey Wolfe. I'm the assistant city attorney with the City of Danville. Would you like me to explain what, exactly, the bill would—okay.
- **Marshall:** I think maybe first of all— they've probably heard it from me, but maybe they need to hear from somebody else. That's the issue in Danville that you're trying resolve and where did the idea come from over in North Carolina and brought it across. So if we could give a little bit of background, first of all.
- **Recordation of Deeds/Liens; Pilot Project Danville (Bill in Binder)**
 - **Wolfe:** Sure. There are multiple issues that we're trying to resolve. The first is just basic tax collection. We're trying to get another tool in our arsenal, essentially, to enforce. We have a rather significant tax delinquency of about 40,000 people and recurring delinquency of about \$1.8 million a year. That is after the efforts of our independent collections council. In fiscal year 2008, they recovered about \$700,000 of delinquent tax revenue, and the overall delinquency barely went down about \$5,000. They're doing a lot of work just to keep that static. And that figure also excludes about \$4.7 in liens for nuisance abatement charges, including the demolition of unsafe structures, weed abatement, things like that.
 - **Marshall:** And let me add to that. When I was on city council, it's been a decade and a half ago, but the City of Danville at that time had 12 percent of its housing in the city as vacant.
 - **Wolfe:** That's right.

- **Marshall:** Now it's not quite as much, but the City of Danville is appropriating a million and a half dollars a year taking down derelict structures. So you can ride through different neighborhoods, and you'll see a good house, good house, a derelict structure, good house, good house. And so what they are doing is these fall in disarray when you lose close to 20,000 in population in less than a decade. People go somewhere else looking for another job.
 - So, the problem we're having is it's not fair to the people in those neighborhoods who are taking care of their houses to have that derelict structure. But it's also not fair to us taxpayers who are having people who are gaming the system.
 - I happened to have breakfast yesterday with the city manager. And one company that he was telling me about is Slum Dog Millionaire.
- **Wolfe:** That's right.
- **Marshall:** You can't make this up.
- **Wolfe:** Slum Lord Millionaire.
- **Marshall:** Oh, Slum Lord Millionaire. And who is it owned by? Spanky Macher from Roanoke, who used to run a restaurant named Spanky's. So this is the type of issue we're dealing with. I just wanted to add that in. Sorry; keep going.
- **Wolfe:** And just to dovetail from that a little bit, I found out from a building official that City of Danville demolished about 50 privately owned nuisance structures in fiscal year 2015 at a cost to the City of about \$700,000. Charles Bookie, our housing consultant, issued a study that suggested that we should demolish up to 500 by the end of 2020 to improve our housing stock, which, again, is a significant cost to the City. And it's important to us that we're able to perfect and impose and collect on the liens for those expenses against the property owner. That is something that this bill is attempting to address.
- **Female:** Mr. Chairman, may I ask a question?
- **Marshall:** Yes, please.
- **Female:** My question is, have you all done an analysis to see how many of these are parcels where the lien is more than the assessed value?
- **Wolfe:** I do not know if anyone has determined that figure. I apologize.

- **Female:** That will affect whether or not people are going to even want to make the purchase, make the sale, make the transaction happen—if the lien is more than what the property’s worth.
- **Wolfe:** Sure, sure. I’m afraid I don’t have that information.
- **Marshall:** Okay. Further questions?
- **Flynn:** Yes, Mr. Chairman. A question about the draft. I’m sorry I didn’t get back to you guys. In Section 3, the exemptions from it or exceptions to it, and that is the deeds conveying property the Danville Redevelopment Housing Authority, I’d raise that issue about there’s a provision in the tax sale part. And I see that that is now identified in Chapter 39 of Title 58.1 where the property owner can convey the property to the locality. That’s the language. I just wondered, just belt and suspenders a little bit. Still, if perhaps it should be stated on sub sub 5 that any deeds conveying property to the City or the Danville Redevelopment Housing Authority? I don’t know if you need that from the City’s perspective. Anyway, just offering the flexibility.
- **Wolfe:** Sure. I don’t know if we’d regard that as necessary, but it’s nice to have the flexibility.
- **Flynn:** Mr. Chairman, I would offer that as an amendment to this legislation, if possible.
- **Marshall:** So, Mark, tell me—
- **Flynn:** It’s in subsection 3. It has 3, 1, 2, 3, 4, and the fifth one: Any deeds conveying property to the City or to the Danville Redevelopment Housing Authority.
- **Marshall:** So your motion is to strike that?
- **Flynn:** No, it’s to add “the City or.”
- **Marshall:** And where would we add that?
- **Flynn:** It would be on subsection 3 in Roman numeral V. “Any deed conveying property to—it says now the Danville Redevelopment Housing Authority. We would just add “the City or” to the Danville Redevelopment Housing Authority.
- **Marshall:** Okay. Is that a motion?
- **Flynn:** Yes, sir.
- **Marshall:** Do I have a second?

- **Male:** Second.
- **Marshall:** Any discussion? All those in favor of that say Aye. Opposed? Any other questions? David, this came before yours? No, it didn't; it came before Senator Locke. Senator Locke, are you still on the phone?
- **Palen:** Mr. Chair, Senator Locke is no longer on the phone.
- **Marshall:** All right. So, what's your pleasure? What we're asking is a recommendation as we have done in the past in that Do we want this bill to be part of our packet of bills that would go forward for endorsement by the Commission in '17.
- **Carr:** Mr. Chairman, I'll make that motion.
- **Male:** Second.
- **Marshall:** I have a motion and a second. Any discussion? All those in favor say Aye. Opposed? Thank you.
- **Wolfe:** Thank you, Mr. Chairman.
- **Marshall:** Thank you, sir.
- **Palen:** If we could return to the first item on assistance animals. Did you want to ask if there is anybody from the work group that wants to carry that legislation? And for this legislation, may I put you as the—
- **Marshall:** Yes. The assistant animal, we did not vote on that. So, do we want to make that a recommendation from the Housing Commission for '17? If somebody does, make a motion on that.
- **Barker:** I'll make a motion to make that a recommendation of the Housing Commission.
- **Marshall:** All right. And do I have a second?
- **Male:** Second.
- **Marshall:** Any discussion? Hearing none, all those in favor say Aye. Opposed? Who had the bill to start with?
- **Palen:** The bill came to the Commission through a letter. It was not a legislator.
- **Male:** It was just a request.
- **Marshall:** It was a request; it was not a bill. All right. So who wants the bill? All right.

- **Barker:** I was at the meeting, so I could know a little bit about the issue now.
- **Marshall:** And I hate to even say this, so you're going to be the lucky dog that's going to take this.
- **Barker:** From one barker to. . .
- **Marshall:** That's even better. Okay. All right. Anybody on the House side who wants to take this? Hearing none, congratulations. What's next, Elizabeth?
- **Disclosures in Historic Districts** (Recommended by Work group; Bill in Binder)
 - **Palen:** Mr. Chair, next we have disclosure in Historic Districts. This bill came about because in Senator Locke's district there were people that were purchasing homes in areas that are designated as historic districts. They were purchasing the homes, and then they were destroying the historic elements of the homes and saying that they were not aware that they couldn't take off the porch or the windows, or they were putting on roofs that were asphalt and doing things that were not in conjunction with what they should do in a historic district, thereby having the district lose value as a whole and the neighbors lose value in their homes.
 - So they asked if there could be packets as there are in property owners' associations giving their rules and regulation of historic districts. That ultimately did not work on a statewide basis, but there is a proposed bill that maybe Chip could describe.
 - **Dicks:** Mr. Chairman, member of the Commission, the discussion was about whether effectively the City of Portsmouth would become like a homeowners association and give a packet that included all the historic information that they adopted at the local ordinance level. As Elizabeth said, there were a number of problems with enforcement. As you all know, we have a buyer beware or a red flag disclosure bill already existing in law that alerts the buyer to certain kinds of things that they should be aware of.
 - And so the language before you, I think, in your packet basically adds to existing language that says buyer beware about a historic district. And it goes on to say that you need to review any materials that the locality has that either are online or in the office to make sure that you know what you can do in terms of renovation of the property, addition of a deck, or any other sort of thing that might affect the historic quality. That's the compromise that we came out with in the stakeholder discussions.
 - **Marshall:** Let's see if we have any questions.

- **Palen:** Just on another note, Mr. Chair. This bill was voted on in committee. Portsmouth agreed to it, and it had the recommendation of the work group.
- **Marshall:** All right. Question of Commission members? This is from Neighbor Transitions-did they recommend that this bill go forward?
- **Dicks:** Yes.
- **Palen:** Yes, sir, it was recommended to go forward.
- **Marshall:** Okay. Do we have a motion? I have a motion and a second to move this bill forward on our recommendation list. Any discussion? All those in favor say Aye. Opposed? Thank you. Next, Elizabeth.
- **Recycling in Multi-Family Dwellings (No Legislation)**
 - **Palen:** The next item we had on the agenda came in the form of a request from Senator Ebbin to look at recycling in multifamily dwellings. We had Senator Ebbin present at a work group meeting, and then we had a study prepared by VACO and VML and determined that there is no legislation to go forward at this point in time.
 - **Marshall:** Okay, thank you. I guess next is Common Interest Communities. Delegate Bulova.

4. **Common Interest Communities – Delegate David Bulova**

- **Small Self-Managed CICs and Fees (Bill in Binder)**
 - **Bulova:** Thank you, Mr. Chairman. We actually heard our final bill this morning at 9:00. Delegate Watts brought up the issue of the fact that our Code has a differential between professionally managed and self-managed HOAs on the disclosure packet fees. As we got more into her bill, I think she started to realize how long of a history there is about why the Code is the way that it is and the fact that there are some self-managed associations that are very sophisticated; some of them aren't. And sometimes it has nothing to do with size.
 - Ultimately, even though she came in during the summer and then we came back today, we were not able to reach consensus between the stakeholders, primarily the Community Association Institute and the realtors. I'm not sure if they will. But we did talk about the fact that the stakeholders are looking at potentially doing a comprehensive review of the Property Owners' Association Act, so this might be a good issue to look at in a broader context.

- So, what I think we'll see is a request from Delegate Watts by letter that if we do embark on that, then we'll also take a look at this particular issue and make sure that she's a stakeholder at that table.
- **Marshall:** I asked a question that I knew the answer to. I asked Delegate Watts if she wanted to speak.
- **Delegate Vivian Watts:** I think that Delegate Bulova fairly expressed it. I will be introducing two versions of the bill, one that the realtors had developed and one that was a different, more simply version, with the idea of coming before I believe General Laws and asking that a letter be drafted that really focuses the need for this type of comprehensive review now that the Common Interest Community Legislation has been in place for fifteen years with a lot of amendments to it to bring cohesiveness to it. I know we've had good dialogue in the last ten months to realize, as Delegate Bulova said, the sophistication of a number of the self-managed and to focus on the product rather than necessarily the size of the associations.
- **Marshall:** When you say review, the bill that you're going to put forward, are you going to ask for the review from the Housing Commission or?
- **Watts:** Next year.
- **Marshall:** Okay, good.
- **Watts:** But not asking for any recommendation at this time.
- **Marshall:** Okay, thank you.
- **Watts:** Thank you.
- **Marshall:** Any questions of Delegate Watts? Thank you, ma'am. Anything else? Okay.
- **Palen:** Mr. Chair, we have two other issues that were referred to the Commission.
- **Marshall:** Are you on the front page?
- **Palen:** I'm under the Referred Legislations tab.
- **Marshall:** Under Referred Legislation, okay.
- **Palen:** I just wanted to let you all know what we did with those things that were referred. One was the ground cover in proximity to buildings. We heard from DHCD on that topic. The topic was deemed to be better suited to be decided according to Building Codes, so we didn't go any further with that issue.

- Senator Ebbin's study on bug infestations in adjoining buildings: after discussing some constitutional complications with him about passing that legislation or putting together some legislation on that, he decided that he no longer needed us to study that issue.
- And Senator Vogel sent to us a piece of legislation on the Virginia Community Impact Authority. If anybody's interested, I have further information on that issue. I spoke with her about the fact that it did not really address housing directly. And I spoke to her constituent, and I told him that we could only address the portion of that legislation that impacted housing. So that was no longer of interest to that party, either, so we did not take up the issue for study.
- **Marshall:** Okay. Any questions of Elizabeth on that? All right.

VI. Election of Chair

- **Marshall:** Let's do a little bit of housekeeping here. First of all is that T.K. has been a member of this Commission all the way back to 2000. A real trusted member. He's terming out. Is that correct? He's volunteering to go off. I think he's got other things to do. But T.K. has done a great job here. Elizabeth, what I'd ask of you is to draft a letter that we can send to him, thanking him for his service.
 - The next thing is election of the chair and vice-chair.
- **Palen:** Mr. Chair, Senator Locke—
- **Marshall:** I think we might have Senator Stanley.
- **Stanley:** Mr. Chairman, I have a motion. Mr. Chairman, my motion would be that we re-elect you as chairman and also Senator Locke as vice-chairman of this very fine committee, which I now serve on.
- **Male:** Second.
- **Marshall:** All right, so the recommendation is to elect you as—
- **Stanley:** My motions exactly were to elect Delegate Danny Marshall as chairman and Senator Mamie Locke for vice-chairman.
- **Marshall:** All right. Do we have a second?
- **Male:** Second.
- **Marshall:** Any discussion? All those in favor say Aye. Opposed? Thank you. Thank you for your confidence.

VII. Public Comment and Adjournment

- **Marshall:** Now it's time for public comment, but I think all the public has left. But if anybody else would like to come up and speak, please do so now.
 - As we move forward into '17, a lot of bills come before you, Senator Stanley, and before your subcommittee. And I serve on CCNT, a committee that hears a lot of these bills. So, as you see something, an idea that's not quite ready for prime time, please send it. Chip, anybody else, that has some ideas that you think that we might want to look at in our program of work for '17, please either get those to me or get those to Elizabeth.
 - All right. Any public comment? Anybody out there to tell us how the world should be?
 - Hearing none, Merry Christmas. Happy new year.
 - The meeting was adjourned at 1:35PM